IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

NO. 436

BIRDIE MAE DAVIS, ET AL.,
Petitioners,

v.

BOARD OF SCHOOL COMMISSIONERS
OF MOBILE COUNTY, ET AL.,
Respondents.

On Writ of Certiorari to the United States
Court of Appeals for the Fifth Circuit

BRIEF FOR THE STATE OF ALABAMA AS AMICUS CURIAE

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BRIEF FOR THE STATE OF ALABAMA AS AMICUS CURIAE

THE INTEREST OF THE STATE OF ALABAMA

This brief, amicus curiae, is presented by the State of Alabama and is sponsored by the Attorney General of the State of Alabama, pursuant to Rule 42(4), Rules of the Supreme Court of the United States. School children throughout the State of Alabama are vitally affected by the issues before the Court in this case. The State of Alabama recognizes the mandate to establish nonracial and unitary school systems. In view of the position taken by the petitioners, it is of critical importance for this Court to again define the requirements of a unitary school system and to thereby allow school systems throughout this state and throughout the nation to proceed with their vital function of educating children, regardless of race, and in a nondiscriminatory manner.

The definition of the unitary system, as advanced by the petitioners, would require racial quotas and racial balancing in public education. The maintenance of such balances and racial ratios would of necessity forever require affirmative racial consciousness in public education. Attendance areas would have to be racially gerrymandered or noncontiguous zones shifted or children bused from different areas year after year, with no concern for the stability which is so important to the school world of a child. We do not here contest the affirmative duty of school boards to abolish dual school systems. We do, emphatically, urge that racial ratios and racial balances are not constitutionally required in the establishment or maintenance of the unitary system.

THE QUESTIONS BEFORE THE COURT

1. Must any particular racial balance be achieved in every school throughout a school system wherein no person is effectively excluded from any school because of race or color?

2. Must nondiscriminatory and fairly conceived geographic school attendance areas be altered to achieve any particular racial balance in every school throughout a system wherein no person is effectively excluded from any school because of race or color?

3. Must children be bused from one nondiscriminatory geographic attendance area to another for the sole purpose of achieving or maintaining any particular racial balance or racial ratio in every school throughout a system wherein no person is effectively excluded from any school because of race or color?

4. Is geographic districting based on place of residence an unreasonable classification so as to offend the equal protection clause?

5. Is the failure to bus children to and from school for the purpose of achieving a racial balance so unreasonable as to violate constitutional demands?

STATEMENT OF THE CASE

The Court of Appeals for the Fifth Circuit on June 8, 1970, upon obtaining supplemental findings of fact from the district court below, reviewed the constitutional effectiveness of proposed desegregation plans for the Mobile, Alabama school system.[1] In the June 8, 1970, order, as amended, the Court of Appeals held six elements to be essential in disestablishing a dual school system; i.e., composition of student bodies, faculty, staff, transportation, extracurricular activities and facilities. The court held the plan approved by the district court to be constitutionally defective in student assignment and also in faculty and staff assignments.

On the element of student assignment, which is the issue that petitioners have now brought before this Court, the Court of Appeals stated that it had studied several proposals for student assignment as submitted by the Justice Department, by the Department of

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1. On August 4, 1970, the Court of Appeals for the Fifth Circuit amended the June 8, 1970, order by approving certain nondiscriminatory attendance area changes which the district court provided upon remand, some of which actually increased the degree of desegregation.

The Court of Appeals for the Fifth Circuit on August 4, 1970, also approved the finalizing of zoning for the entire system which the district court provided upon remand.

Health, Education and Welfare, and by the school board.[2]

The Court of Appeals concluded that the Department of Justice plan, as modified by the court to increase desegregation, would disestablish the dual school system in the Mobile schools. The plan as approved is basically an attendance area plan which increases desegregation by the pairing of some schools which are in close proximity, and by the restructuring of grades in others. (The Court of Appeals requires complete desegregation of faculty and staff.) The approved plan maintains the neighborhood school concept while eliminating all but eight Negro facilities out of a total of 96 schools in the system. Under the approved plan, 25% of the Negro students (7,725 out of 30,884) will be assigned to the eight schools which would remain all or virtually all Negro schools.[3] The court found that these all Negro student bodies were the result of neighborhood patterns and ordered a majority to minority transfer provision with transportation in order to alleviate neighborhood entrapment.

Other plans before the court involved extensive transportation, contiguous and noncontiguous zoning, contiguous and noncontiguous pairing, and extensive cross busing. The only such plan before the court which eliminated every all, or virtually all, Negro school was designated as "HEW Plan B-1 Alternate." This alternate plan called for noncontiguous zoning

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2. The plans of the Justice Department and of the Department of Health, Education and Welfare are set forth in footnote 3 in the June 8, 1970, opinion of the Court of Appeals for the Fifth Circuit.

3. These eight schools are all at the elementary level.

and the noncontiguous pairing of every all Negro school in predominantly Eastern Mobile with a predominantly white school in Western or Southern Mobile (across the system) and for extensive cross transportation of both white and Negro children.

ARGUMENT

In this brief amicus, we shall not attempt to encompass the full range of detailed factual data argued by the parties to the case. Rather, we shall refer to the order and opinion of the Court of Appeals for the Fifth Circuit, and to the underlying legal significance to public education throughout the nation.

POSITION OF PETITIONERS

The petitioners ask this Court to immediately implement the plan designated as "HEW Plan B-1 Alternate." It is obvious that petitioners seek the altering of attendance zones, the busing of children, and the utilization of noncontiguous and "satellite zoning" for the purpose of achieving a racial balance or racial quota in every school throughout the system. The petitioners further seek to have this Court issue a directive to the effect that the neighborhood concept of student assignment can constitutionally be used only if racial balancing is achieved. (Page 31, Motion to Advance, and Petitioner for Writ of Certiorari.)

POSITION OF THE STATE OF ALABAMA

A UNITARY SCHOOL SYSTEM IS CONSTITUTIONALLY ACHIEVED BY THE USE OF NONDISCRIMINATORY ATTENDANCE AREAS WITHOUT COMPULSORY RACIAL BALANCING IN EACH SCHOOL THROUGHOUT THE SYSTEM.

The petitioners urge the immediate imposition in the Mobile County School System of a desegregation plan which would require the utilization of extensive cross-busing (white children bused across town to schools in predominantly black residential areas, and black children similarly bused into predominantly white residential areas); and which would require the noncontiguous pairing of each Negro school in Eastern Mobile with a predominantly white school in Western or Southern Mobile. Petitioners urge this plan over the one required by the Court of Appeals on the sole ground that under the plan suggested by petitioners, there would be no all black or virtually all black schools within the Mobile system. Under the plan approved by the Court of Appeals, as previously noted, only eight out of a total of 96 schools would remain Negro. The Court of Appeals in requiring the plan now before the Court and which the court found would disestablish the dual system, stated:

> "We have examined each of the plans presented to the district court in an effort to determine which would go further toward eliminating all Negro or virtually all Negro student body schools while at the same time maintaining the neighborhood school concept of the school system."

It is apparent that the Court of Appeals was seeking the most effective and workable, nondiscriminatory student assignment plan. Clearly, contiguous zones and pairings where schools are in close proximity are more *workable* than noncontiguous zoning and pairing. It is obvious that cross town transportation would result in educational disruption and confusion and since such measures have as their avowed goal the maintenance of some racial balance in *all* schools throughout

the system, they are subject to constant and annual change as residents move from one area to another within the district, or when residents move out of the district entirely.

The opinion of the Court of Appeals evaluates the entire system to determine whether the dual system would be eliminated under the required plan. The court below specifically noted that every Negro child will attend school in a desegregated junior high and high school on a neighborhood basis. This approach is entirely consistent with the language of *Green*, which speaks in terms of the *whole* system.[4]

The Court of Appeals for the Fifth Circuit in a recent opinion by Chief Judge John Brown noted on May 5, 1970, that the entire system must be evaluated (See footnote 6, on Page 8 of Opinion), and further made the following critical analysis:

> "The deficiencies *do not lie in the simple existence of some schools that are all or virtually all Negro or white.* They lie instead in the fact that a substantial number of Negro students will receive their entire public education in a segregated school environment. . ." (Emphasis added) *Singleton v. Jackson Municipal Separate School District*, No. 29226, 5th Cir. May 5, 1970.

The court below reached a logical, reasonable and constitutional conclusion in selecting the most effective plan which maintained the basic concept of the neighborhood school.

Desegregation plans are properly weighed according to their effectiveness, within the boundaries of educational soundness and administrative feasibility. *Green*

4. *Green v. School Board of New Kent County*, 391 U. S. 430, 88 S. Ct. 1689, 20 L. Ed 2d 716.

v. School Board of New Kent County, 391 U. S. 430, 88 S. Ct. 1689, 20 L. Ed 716.

Courts throughout the country are commissioned by *Brown II* to give "weight to public and private considerations." 349 U. S. 294, at 300; *Green v. School Board of New Kent County*, supra, speaks in terms of plans that are "reasonably available" and "feasible", 391 U. S. 430 at 439 and 441; and Mr. Justice Harland in *Carter v. West Feliciana Parish School Board*, 396 U. S. 290, 90 S. Ct. 608, 24 L. Ed 2d 477, refers to the "workability" of approved desegregation plans. Such references are clear authority for the decision of the Court of Appeals for the Fifth Circuit in not requiring extensive cross town busing and noncontiguous satellite zoning for the purpose of achieving some racial balance when the plan as required was in fact found sufficient to eliminate the dual school system.

The basic question that ultimately emerges in this case is whether nondiscriminatory and fairly conceived attendance zones based on neighborhood and nearest school concepts must be abandoned in order to mechanically and arbitrarily integrate every school throughout a system. There is no constitutional justification or authorization for this. *Green*, supra, in fact suggests geographic zoning as one way of "realistically" converting to a unitary system. *Brown II* suggests that courts consider ". . . revision of school districts and attendance areas into *compact units* to achieve a system of determining admission to the public schools on a nonracial basis." (Emphasis added.) This Court in *Alexander v. Holmes*, 396 U. S. 19, 90 S. Ct. 29, 24 L. Ed 2d 19, quite clearly defined a unitary system as one wherein no person is to be effectively excluded from attendance in any school because of race or color.

Brown I, Green and *Alexander* all speak in terms of discriminatory state action in *excluding* children *because of race or color.*[5]

The decisions of this Court in prior school desegregation cases are not reasonably construed to contemplate or envision a requirement that school children, because of their race, be transported out of a residential area or that attendance areas be racially gerrymandered to achieve some racial balance in each school throughout a school system.[6]

In the often quoted social science report which was attached as an appendix to the first brief of appellants in *Brown v. Board of Education,* supra, the following statement is made:

"For purposes of the present statement, segregation refers to that restriction of opportunities for different types of associations between the members

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5. The case of *Cooper v. Aaron,* 358 U. S. 1, 78 S. Ct. 1401, 3 L. Ed 2d 5, reinforces *Brown* in holding that the Fourteenth Amendment *forbids states to use their governmental power* to bar children on racial grounds from attending school where there is a state participation through any arrangement, management, funds or property.

6. In *Bolling v. Sharpe,* 347 U. S. 497, 74 S. Ct. 693, 98 L. Ed 884, the court cautioned: "Classification based solely upon race must be scrutinized with particular care, since they are contrary to our traditions and hence constitutionally suspect." See also J. Kaplan, *Segregation Litigation and the Schools—Part II,* 58 Nw. U. L. Rev. 157, at 188, (1963): "Although today a court might rule that the state is required to consider race in a benign way, tomorrow this might well prove a precedent for a much less happy result. Moreover, even today it is not easy to decide whether a given racial classification is benign. . . . The very difficulty of making such determinations, especially in the context of litigations which may not even bring to bear our limited knowledge on the subject, would seem to militate strongly against any attempts by the courts to require states to consider race in a benign manner."

of one racial, religious, national or geographic origin, or linguistic group and those of other groups, which results from or is supported by the action of any official body or agency representing some branch of government. *We are not here concerned with such segregation as arises from the free movements of individuals which are neither enforced nor supported by official bodies.* (Emphasis added) . . "[7]

Counsel for the appellants in *Brown II* made the following statement on pages 10 and 11 of the Memorandum Brief which was filed in the Supreme Court of the United States during 1954 pursuant to the request of the court:

"The Negro children before the Court in these cases are entitled to public education on a non-segregated basis. The only way the relief can be meaningful to them is to abolish the policy of using race as a criterion for assignment of students. Thus, the only effective decree would be one which will enjoin the use of race in the assignment of any pupil in the school districts involved."

During the first oral argument before the Supreme Court in the *Brown* case, Mr. Justice Frankfurter asked Counsel for the appellants if every mother would, under the relief then requested, be entitled to have her child go to a nonsegregated school. When counsel answered "No, Sir", the Justice inquired as to what the relief would in fact accomplish. Counsel for the appellants replied "The school board, I assume, would find some other measure of distributing the children by

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7. *Effects of Segregation and the Consequences of Desegregation: A Social Science Statement,* 37 Minnesota Law Rev. 427 (1953).

drawing district lines," and that such lines should be drawn on a "natural basis."[8]

Nondiscriminatory, fairly conceived, and logically drawn geographic attendance zones, based on the location of residents, regardless of race, must in all logic and constitutional reason be held valid. The argument that nondiscriminatory district lines are legally deficient unless they result in racially balanced school attendance, simply does not pass constitutional muster.

It is only reasonable and logical that children attend the school nearest to their residence. The educational justifications for assignment to the nearest school are abundant and apparent, especially for younger and elementary age children.[9] The Court of Appeals below noted the obvious fact that small capacity elementary schools naturally draw students from a more limited

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8. 21 U. S. L. Week 3164 (December 16, 1952); Kaplan, *Segregation Litigation—Part II*, 58 Nw U. L. Rev. 157, at 178. The Law Week rendition, supra, reports that Mr. Justice Marshall who was then one of the counsel for the appellant stated in argument that district lines drawn on the basis of race or color would be a violation of the court decree and that the lines should be drawn *"on a natural basis."* (Emphasis added.)

9. Schools in proximity to the homes of students are of extreme importance from the aspect of traffic and pedestrian safety; in children being able to reasonably travel from their home to school, in children being able to reasonably use the school facilities after school hours; the nearest school concept eliminates the severe problem of a school board seeking to determine which children to bus away from their nearest school; the nearest school concept eliminates the difficulty of parent contact with a distant receiving school, (often times it is necessary for parents to afford medical attention and innumerable other special and specific consideration to school age children); the nearest school concept alleviates the problem of tardiness or absence due to length of travel or missing bus schedules.

area whereas high schools with larger capacities will have larger attendance areas. The racial composition of the persons living in close proximity to an elementary school is naturally reflected in that school's attendance to a greater degree than in a larger high school or junior high school.

Negro and white children who are in the same grade and who live in the same geographic area are assigned to the same school under the plan ordered by the court below. Pursuant to the prior orders of this Court, and to the instant order of the Court of Appeals, the faculty in the schools to which such assignments are made will be completely desegregated and not racially identifiable.

This method of student assignment, based on place of residence, and in the absence of any improper motivation, cannot possibly be judicially held to be such an unreasonable classification as to offend the equal protection clause.[10]

If the area into which a family moves, or in which the family continues to live, is occupied by a predominance of black or white residents, the school nearest to such an area will naturally and inevitably reflect this

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10. Schools throughout a system will of course vary in quality of teachers, physical facilities, etc. If the teachers are assigned without regard to race so that the school cannot be identified as being intended for either black or white children, and if physical facilities are provided on the same nondiscriminatory basis, there is no racial discrimination. "The Supreme Court has never held that in the absence of some racial classification the mere inequality of one school compared with another involves a constitutional violation. In many communities one school is clearly better in terms of faculty, student body, physical facilities, and prestige, than others, yet no one has suggested that this inequality raises a federal constitutional question." Kaplan, *Segregation Litigation—Part II*, 58 Nw. U. L. Rev. 157, at 172 (1963).

racial composition. This is not a violation of the Fourteenth Amendment. If the student bodies of some schools remain all Negro due solely to residential patterns, there is simply no constitutional wrong to be remedied.[11]

Brown I, supra, *Green*, supra, *Alexander*, supra, and *Northcross*,[12] and all intervening decisions hold state imposed dual systems unconstitutional and basically wrong. *Brown I* holds that from this wrong, injury and invidiously imposed inequality is inevitable. Therefore, in *Brown I*, there was found to be a constitutional wrong and an injury therefrom to be remedied. However, when nondiscriminatory and fairly conceived geographic attendance zones are drawn and children are assigned in accordance therewith without regard to race or color, there is a complete absence of invidious state action. Remedial measures, such as racial balancing through busing, noncontiguous zones and non-

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11. As to the possibility of noninvidious injury from imbalance in a unitary system, recent educational surveys show that family background, social and economic status and community characteristics are the real controlling elements of school achievement rather than the racial composition of a school. U. S. Department of Health, Education and Welfare—Equality of Educational Opportunity, § 3.2, 966, as quoted in D. Cohen, *Racial Equality in Education, Part I*, 16 UCLA Law Rev. 255 (1969). These observations become especially meaningful when completely desegregated faculties are provided and when state imposed segregated assignment is eliminated. As to the educational harm caused to both Negro and white children by busing to secure integration, see Kaplan, *Equality in an Unequal World*, 61 Nw U. L. Rev. 363, at 401-402 (1966).

12. *Northcross v. Board of Education*, 397 U. S. 232, 90 S. Ct. 891, 25 L. Ed 2d 246 (1970).

contiguous pairings are entirely without constitutional justification.[13]

President Richard M. Nixon, in a statement, *Explaining His Policy on School Desegregation*, N. Y. Times, March 25, 1970, p. 26, stated:

> "There is a constitutional mandate that dual school systems and other forms of de jure segregation be eliminated totally. But within the framework of that requirement, an area of flexibility—a 'rule of reason'—exists, in which school boards, acting in good faith, can formulate plans of desegregation which best suit the needs of their own localities. . . .
>
> *When there is a racial separation in housing, the constitutional requirement has been held satisfied even though some schools remained all-black.*" (Emphasis added.)

The United States Congress has legislatively spoken on several occasions against the busing of students for the purpose of achieving a racial balance. Tit. 42 U. S. C. 2000(c), and 6(a) (2) § 401 (b) and 407 (a) (2) of the Civil Rights Act of 1964; Department of Labor and Health, Education and Welfare Appropriations Act, 1969, Pub L. No. 90-557, § 410, 82 Stat. 969; Model Cities Act of 1966, 42 U. S. C. § 3303(d); Elementary and Secondary Education Act of 1965, 20 U. S. C. § 884 (Supp. 111, 1965-67).

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13. See Kaplan, *Segregation Litigation—Part II*, 58 Nw U. L. Rev. 157, at 176 (1963): "Merely because racial classification without harm is unconstitutional does not mean that harm without racial classification is equally impermissible. Law provides us with many examples where a party may suffer identical harm under two different circumstances and have a legal right to redress under one and not the other. . . . This principle applies equally to racial problems. . . ."

U. S. District Judge Frank M. Johnson, Jr., of the Middle District of Alabama, during February of 1970, in reviewing desegregation plans for the Montgomery, Alabama school system concisely set forth the law as to the issue of remedial measures necessary to eliminate a dual school system:

"Plaintiffs' objections and the few proposals made by the Office of Education, Department of Health, Education and Welfare, that differ from the plan as proposed by the Montgomery County Board of Education, appeared to be based on a theory that racial balance and/or student ratios as opposed to the complete disestablishment of a dual school system is required by the law. Such is not this court's concept of what the law requires. *Complete disestablishment of the dual system to the extent that it is based upon race is required. While pairing of schools may sometimes be required to disestablish a dual school system, the pairing of schools or the busing of students to achieve a racial balance, or to achieve a certain ratio of black and white students in a school is not required by the law.*" (Emphasis added). *Carr v. Montgomery County Board of Education,* .....F. Supp. ....., Civil Action No. 2072, M. D. Ala., February 24, 1970. (Affirmed by the Fifth Circuit Court of Appeals in an opinion by Judge Goldberg (5th Cir. No. 29521, June 29, 1970).[14]

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14. The Supreme Court of the United States has specifically recognized Judge Johnson's thorough understanding of the constitutional principles and requirements in school desegregation. *U. S. v. Montgomery County Board of Education,* 395 United States 225 (1969).

It is extremely significant here that in *United States v. Montgomery County Board of Education*, 395 U. S. 225, (1969), which dealt with faculty desegregation, the Supreme Court noted:

> "As the United States, petitioner in No. 798 recognizes in its brief, the District Court's order [requiring remedial faculty ratios] 'is designed as a *remedy* for past racial assignment. . . . *We do not, in other words, argue here that racially balanced faculties are constitutionally or legally required*'. Brief for the United States at 13." (Emphasis added.)

We understand the law, as set forth in the many cases from *Brown* through *Green* and *Alexander* to *Northcross*, to be that school districts have an affirmative duty to completely eliminate dual school systems based upon race, and to provide unitary systems. It may be in some cases that dual systems based on race have resulted in two schools with the same grades in close proximity to each other, or in overlapping or otherwise discriminatory bus routes. To *eliminate the dual system*, the restructuring of schools in close proximity or remedial bus route changes may logically be required. *The constitutional purpose of such remedial measures is not racial balance but rather the achievement of a nondiscriminatory, unitary school system.*

For this Court to order racial balance in schools throughout systems over the country would keep American public education in perpetual turmoil. In many areas public education could not survive. No court or governmental agency in our democratic society can tell a family where to live or where to move. An acceptably balanced school this year may be totally unbalanced two years from now, or even next year.

Why do people live in one neighborhood rather than another? It is indeed an oversimplified and overstrained answer to attribute racial or nonracial neighborhood patterns to state or governmental action. There is no creditable evidence before this Court that Negroes in Mobile, Alabama, and throughout the nation, who continue to live in neighborhoods with a preponderance of their race do so because prior to 1948 racial restrictions in deeds were judicially enforced[15] or because theaters and places of public amusement throughout the country have been racially segregated in the past.[16] When this question is put in proper perspective, it must in all reason be conceded that personal preference and economic reality constitute the real controlling factors in the selection of a neighborhood in which a person decides to remain or in which to buy or rent a home.[17]

The petitioners in brief ask this Court to require far more than the unitary school system envisioned in *Brown*, and clarified in *Green* and *Alexander*. Petitioners seek in addition to unitary systems, for all schools throughout all systems to be racially balanced. Petitioners do not stop with this, but they even suggest that

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15. Prior to this Court's decision in *Shelley v. Kraemer*, 334 U. S. 1, 68 S. Ct. 836, 92 L. Ed 2d 1161.

16. Kaplan, *School Segregation Litigation—Part II*, 58 Nw U. L. Rev. 157, at 186 (1963).

17. The dubious labels of de facto and de jure segregation are further obscured and completely desectionalized when such elements as pre 1948 racial restrictions in deeds, public accommodation laws and housing ordinance are injected. These elements in varying degrees certainly and without question were present throughout the entire nation prior to *Shelley v. Kraemer*, 334 U. S. 1, 68 S. Ct. 836, 92 L. Ed 2d 1161, and prior to the public accommodation laws, open housing provisions and other antidiscrimination measures of national scope which have become law over the last quarter century.

racially balanced neighborhoods be achieved through the compulsion of a school desegregation case involving the school children of this nation. (See p. 28 of Motion to Advance and Petition for a Writ of Certiorari filed herein). *Brown I, Brown II,* and *Green* certainly cannot be reasonably interpreted to require or to even authorize such a far-reaching proposal.[18]

The following candid and relevant statement was recently made by Robert L. Carter, who was one of the original attorneys for the plaintiff in the *Brown* cases:

> "For, whatever the Court does, our society is composed of a series of insulated institutions and interests antithetical to the Negro's best interest. Effective regulation and control of these institutions and interests must come not from the Supreme Court but from the bodies politic."[19]

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18. Open Housing, Title VIII, Civil Rights Act of 1968, 42 U. S. C. A. 3601, et seq.; *Jones v. Mayer,* 392 U. S. 409, 88 S. Ct. 2186, 20 L. Ed 2d 1189, afforded judicial and congressional protection from housing discrimination. There can be no constitutional justification for imposing this burden on already overburdened school systems.

19. R. Carter, *The Warren Court and Desegregaton,* 67 Mich. L. Rev. 237, at 248 (1968).

CONCLUSION

The Court of Appeals for the Fifth Circuit has had extensive experience with the constitutionality and workability of school desegregation plans. The opinion below from that court holds that a unitary system is constitutionally achieved without the drastic system-wide balancing measures insisted upon by the petitioners. The Court of Appeals evaluated the entire system in requiring the plan which forms the basis of this appeal.

The basic issue is just how far American public education must go in order to achieve a racially non-discriminatory and unitary school system. If some balance in every school is to be compelled, affirmative racial consciousness will be present from year to year in public education. Instead of educating just children, regardless of race, educators throughout this country would be constantly forced to regard race and children would of necessity be classified, assigned, and accounted for on the basis of race or color. These requirements and their result cannot be in the best interest of public education.

It is time that we put school desegregation in its proper perspective.

The *education of children*, as stated in *Brown I*, is indeed perhaps the most important function of state and local government. When racial discrimination is eliminated, when racially nonidentifiable faculities are provided, when no person is effectively excluded from any school because of race, it is time to send educators back to the classroom to carry on with the basic functions of teaching children and of providing quality

education and sound guidance without regard to race or color.

Respectfully submitted,

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